

	<p>DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING</p> <p><i>ENFORCEMENT DIVISION</i></p> <p><i>DIRECTIVE</i></p>	<p>DIRECTIVE NUMBER</p> <p style="font-size: 1.5em;">401</p> <p>DISTRIBUTION DATE</p> <p>October 1, 1998</p>
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1. **SUBJECT: CONCILIATION**

2. **PURPOSE:** To set forth the procedures for conciliating complaints of discrimination.

3. **BACKGROUND:** Conciliation is a term applied to the complaint resolution efforts which occur AFTER the Department of Fair Employment and Housing (DFEH) has made a merit determination that there is reasonable cause to believe there has been a violation of one of the statutes enforced by DFEH. The Regional Administrator, District Administrator, or an individual designated by either of these parties will be responsible for conducting the conciliation conference.

4. **PROCEDURES:**
 - A. **Conciliation Guidelines:**
 - 1) Conciliation will occur AFTER:
 - a) The Consultant has conducted an exit interview with the respondent for purposes of discussing the evidence supporting the merits of the complaint.
 - b) The Progress Memo has been approved by the Regional Administrator/District Administrator and he/she concurs that a conciliation is appropriate.
 - c) A letter from the Regional Administrator/District Administrator (DFEH-200-39) has been sent to the respondent stating that there appears to have been a violation of statute and setting a date for the conciliation.

 - 2) Conciliation is to be held on *every case* where there is probable cause to believe a violation occurred, except in rare situations,

where the Regional Administrator/District Administrator requests exemption and the supervisor of the Regional Administrator/District Administrator concurs with the assessment that formal conciliation is not appropriate.

- 3) At their discretion, Regional Administrators/District Administrators may request that Legal staff participate in formal conciliation. Requests for Legal staff participation should be addressed to the Chief Counsel. Prior to the actual conciliation, the assigned attorney and the conciliator should reach agreement as to their respective roles in the conciliation process.
- 4) Conciliation should not cause cases recommended for accusation to be referred to the Legal Division beyond the 270 days from filing. Where the conciliation process will begin or extend past 90 days before the one year anniversary date of the case, conciliation should be scheduled concurrently with the case being referred to the Legal Division. In such instances:
 - a) Copies of pertinent documents will be retained by the District Office for the purpose of preparing and conducting the conciliation. The transmittal to the Legal Division accompanying the case file will indicate that conciliation is being scheduled.
 - b) If conciliation fails, the Legal Division will be notified immediately by telephone and a brief memorandum from the Regional Administrator/District Administrator.
 - c) If a settlement is not immediate but appears imminent, the Legal Division will be kept informed when an agreement has been signed. A verbal settlement agreement, without a signed document, is not a basis for delaying the issuance of an accusation and/or risking the loss of the Department's enforcement authority. The Legal Division should be kept apprised of the progress of all settlement negotiations and verbal agreements reached by the District Office after the case is sent to the Legal Division.
 - d) The Regional Administrator/District Administrator will retain authority over cases that have been sent to the Legal Division but for which an accusation has not yet been issued. If an accusation has been issued, Legal

staff will make the final determination on the disposition of any proposed settlement.

B. Confidentiality:

Everything that transpires at a conciliation conference is confidential with the following exceptions:

- 1) Issues established as fact during the investigation.
- 2) Terms of the final agreement.
- 3) New facts presented by the respondent at conciliation which cause the Department to re-evaluate the case and determine not to issue an accusation. Respondents are requested to sign a "Release of Information" (DFEH-600-12) so that this information can be used to close the case.

C. State Contractor Considerations:

The FEHA contains specific language regarding sanctions against contractors and subcontractors who contract with the State for public works or goods and services when they engage in unlawful discriminatory practices.

Government Code section 12966 states:

"Where the department issues an accusation, or is about to do so, and the respondent accused of engaging in unlawful practices under this part is a state contractor or is a supplier of goods and services to the state, the director shall send a written notice of the issuance of the accusation and a copy of the accusation to the appropriate awarding agency and request a report of any action which the awarding agency takes in response to the department's notification and issuance of accusation."

Government Code section 12990, subdivision (f), states, in part:

"...where the commission, after hearing an accusation pursuant to Section 12967, determines a contractor or subcontractor is engaging in practices made unlawful under this part, the department or the commission may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed."

During conciliation, the contractor should be informed of the provisions of section 12966.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date